

ASSEMBLY BILL

No. 806

Introduced by Assembly Member Fuentes

February 26, 2009

An act to amend Section 1016.5 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 806, as introduced, Fuentes. Criminal procedure: pleas.

Existing law requires the court, prior to the acceptance of a plea of guilty or nolo contendere to advise the defendant that if he or she is not a citizen, conviction of the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization.

This bill would additionally require the court to advise the defendant that, if he or she is deported from the United States and returns illegally, he or she could be charged with a separate federal offense, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1016.5 of the Penal Code is amended to
2 read:
3 1016.5. (a) Prior to acceptance of a plea of guilty or nolo
4 contendere to any offense punishable as a crime under state law,
5 except offenses designated as infractions under state law, the court
6 shall administer the following advisement on the record to the
7 defendant:

1 If you are not a citizen, you are hereby advised that conviction
2 of the offense for which you have been charged may have the
3 consequences of deportation, exclusion from admission to the
4 United States, or denial of naturalization pursuant to the laws of
5 the United States. *Further, if you are deported from the United*
6 *States and return illegally, you could be charged with a separate*
7 *federal offense for illegal reentry into the United States, pursuant*
8 *to Section 1325, 1326, or both 1325 and 1326, of Title 8 of the*
9 *United States Code, which impose harsh penalties.*

10 (b) Upon request, the court shall allow the defendant additional
11 time to consider the appropriateness of the plea in light of the
12 advisement as described in this section. If, after January 1, 1978,
13 the court fails to advise the defendant as required by this section
14 and the defendant shows that conviction of the offense to which
15 defendant pleaded guilty or nolo contendere may have the
16 consequences for the defendant of deportation, exclusion from
17 admission to the United States, or denial of naturalization pursuant
18 to the laws of the United States, the court, on defendant's motion,
19 shall vacate the judgment and permit the defendant to withdraw
20 the plea of guilty or nolo contendere, and enter a plea of not guilty.
21 Absent a record that the court provided the advisement required
22 by this section, the defendant shall be presumed not to have
23 received the required advisement.

24 (c) With respect to pleas accepted prior to January 1, 1978, it
25 is not the intent of the Legislature that a court's failure to provide
26 the advisement required by subdivision (a) of Section 1016.5
27 should require the vacation of judgment and withdrawal of the
28 plea or constitute grounds for finding a prior conviction invalid.
29 Nothing in this section, however, shall be deemed to inhibit a court,
30 in the sound exercise of its discretion, from vacating a judgment
31 and permitting a defendant to withdraw a plea.

32 (d) The Legislature finds and declares that in many instances
33 involving an individual who is not a citizen of the United States
34 charged with an offense punishable as a crime under state law, a
35 plea of guilty or nolo contendere is entered without the defendant
36 knowing that a conviction of such offense is grounds for
37 deportation, exclusion from admission to the United States, or
38 denial of naturalization pursuant to the laws of the United States.
39 Therefore, it is the intent of the Legislature in enacting this section
40 to promote fairness to such accused individuals by requiring in

1 such cases that acceptance of a guilty plea or plea of nolo
2 contendere be preceded by an appropriate warning of the special
3 consequences for such a defendant which may result from the plea.
4 It is also the intent of the Legislature that the court in such cases
5 shall grant the defendant a reasonable amount of time to negotiate
6 with the prosecuting agency in the event the defendant or the
7 defendant's counsel was unaware of the possibility of deportation,
8 exclusion from admission to the United States, or denial of
9 naturalization as a result of conviction. It is further the intent of
10 the Legislature that at the time of the plea no defendant shall be
11 required to disclose his or her legal status to the court.

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